UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL GOULD,

Plaintiff,

v.

Case Number: 01-CV-10026-BC
Honorable David M. Lawson

JOHN SYMONS, MIKE SCHREMS,
ALLEN RABIDEAU, SCOTT BICKEL,
CHESTER ALLEN, and PAT DOOLAN,

Defendant.
_____ /

OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, AND GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT

The defendants, who are Saginaw city officials, removed a 1948 REO Speedwagon truck, which was in a state of gradual restoration, from the plaintiff's fenced, residential yard. The seizure of the plaintiff's property, under the authority of the city's abandoned property ordinance, was made without benefit of a warrant or other judicial authorization. The plaintiff, acting *pro se*, has filed suit in this Court alleging that his federal constitutional rights under the Fourth, Fifth, Seventh, Ninth and Fourteenth Amendments were violated, and that city officials had no authority to enforce land use laws concerning his property because he traced his ownership to a federal land patent. The defendants filed a motion for summary judgment, and thereafter the Court referred all pretrial matters to Magistrate Judge Charles E. Binder pursuant to 28 U.S.C. § 636(b)(2)(A) & (B). Magistrate Judge Binder filed a report on February 27, 2002 recommending that the motion be granted as to all claims save the Fourth Amendment claim. The defendants filed objections to that portion of the report recommending denial of the summary judgment on the plaintiff's Fourth

Amendment claim, to which the plaintiff replied. The Court heard the parties' arguments on the objection in open court on August 22, 2002, and the matter is now ready for decision.

Since no objections were filed with respect to the recommendation to dismiss the land patent claim and the claims under the Fifth, Seventh, Ninth and Fourteenth Amendments, the defendants' motion will be granted on those claims for the reasons stated in the Report and Recommendation of the magistrate judge. This Court concludes that the plaintiff has stated a valid and enforceable claim for unlawful seizure of his property under the Fourth Amendment. A seizure of personal effects from private property without a warrant or other constitutionally equivalent procedural protection, and absent exigent circumstances, is "unreasonable." As more fully explained below, the City of Saginaw's ordinance does not furnish safeguards sufficient to render the seizure of the plaintiff's property constitutionally reasonable. For these reasons, the Court will adopt the recommendation of the magistrate judge, deny the defendants' motion for summary judgment as to the Fourth Amendment claim, and grant partial summary judgment to the plaintiff on this claim.

I.

The facts of the case are well summarized by the magistrate judge as follows:

> Plaintiff lives at 1928 Jeffers Street in the City of Saginaw, and also owns the adjoining parcel of property located at 401 Birch Street. Both properties are in an R-1A zoning district, designated for agriculture and single family homes. Plaintiff erected a five-foot tall chain link fence around both properties, and stored his disassembled 1948 REO Speedwagon truck, which he was restoring, within the fenced area. (See photographs, Dkt. 29 at Ex. 12.)
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> In May 2000, Defendant John Symons, a code enforcement officer for the City, was investigating code violations in Plaintiff's neighborhood. While Defendant Symons was at one of Plaintiff's neighbor's homes, he noticed the dismantled truck in Plaintiff's yard. Plaintiff was out in the yard himself, so Defendant Symons approached the fence and told Plaintiff that storing the dismantled truck outside in the yard was in violation of a City of Saginaw ordinance.[1] According to Plaintiff's own deposition, Plaintiff "told him not to worry about it," and further "said that the

only thing you got to do is keep you ass over on the other side of that fence." (Pl. Dep., Dkt. 29, Ex. 6 at 19.)

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[1] The Ordinance referred to in this case is found in Article 5 of the Saginaw General Code, entitled "Environmental Improvement." (Dkt. 29 at Ex. 8.) The purpose of the article is articulated as follows:

> This Article is enacted for the purpose of protecting and promoting the public health, sanitation, safety and general welfare in the City; the suppression of disease and contamination; the prevention of urban blight; to protect against and lessen the danger to human life, health and property from fire, explosion, noxious fumes, infestations of insects and rodent, accidents and other hazards on private and public premises; and to protect against and prohibit the creating or continuance of nuisances.

Saginaw General Code, Art. V § 501.

The article goes on to state that "[t]he presence of trash, abandoned property and building materials as prohibited herein is declared to be a hazard to public health, sanitation, safety and welfare, and a public nuisance." Saginaw General Code Art. V, § 502. "Abandoned property" is then defined in part as

> deteriorated, wrecked or derelict property in unusable condition having no value other than nominal scrap or junk value, if any, and which has been left unprotected from the elements, including, without being so restricted, deteriorated, wrecked, inoperative or partially dismantled motor vehicles . . . .

Saginaw General Code, Art. V § 503.1(b).

Complying with Plaintiff's wishes, Defendant Symons did not enter Plaintiff's fenced yard, but rather rolled up a code violation notice and placed it in the chain link fence. Plaintiff saw Defendant Symons take this action, but chose to ignore the violation notice since it was not handed directly to him. (Pl.'s Dep. at 19-20.)

In accordance with the ordinance, Defendant Symons also mailed a copy of the violation notice to Plaintiff via certified mail, which was received and signed for by Plaintiff's wife, Shawn Gould, on May 11, 2000. The violation notice stated that the abandoned property and/or junk vehicles being stored outside were in violation of the ordinance. In the "comment" section of the notice, the following was written: "Please remove dismantled vehicle along garage (no outside storage)." (Dkt 29 at

Ex. 10.) The notice also contained the following paragraph:

> All described property must be removed within ten (10) days from the date of this Notice, or a hearing requested in writing, within that time at Environmental Improvement Office to show cause why it should not be removed. If the property is not removed, nor a hearing requested within the allotted time, it shall be deemed abandoned property and removed and disposed of by order of the City of Saginaw, and the costs of such removal and disposal assessed to these premises.

(*Id*.) The cost of removal was estimated to be two hundred dollars. (*Id*.)

Plaintiff did not respond to the notice. He stated during his deposition that he did not request a hearing because he "didn't think that [it] was going to be an unbiased hearing." (Dkt. 29, Ex. 6 at 22.)

On June 28, 2000, after observing that Plaintiff had not moved the truck parts from his yard, Defendant Symons and Defendant Officer Schrems enlisted the services of Mike's Wrecker and went to Plaintiff's home to remove the truck parts as provided for in the ordinance.[2] Plaintiff refused to allow them into his backyard, and asked if they had a warrant. He was told that no warrant was needed. Plaintiff informed Defendant Symons that he was going to go make a phone call, and went inside the house to call the Saginaw police chief. Plaintiff was unable to contact the chief, so he went back outside and asked Defendant Symons for the name and phone number of his boss. He was given that information. Defendants asked him if he was going to open the gate to the backyard, and when Plaintiff said no, Defendant Officer Schrems used his police radio to summon more officer assistance. Plaintiff went back into his house to call Pat McGovern, Defendant Symons' boss, who allegedly responded to Plaintiff's concerns by explaining that since Plaintiff had received a violation notice, had not requested a hearing, and had not removed the property, then it was "too bad." (Pl. Dep. at 28.)

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[2] The ordinance provides for removal as follows:

> If at the end of the ten (10) days after posting such notice the owner or any person interested in the abandoned item or items described in such notice has not removed the item or items and complied with the ordinance provision cited in the notice or requested a hearing on the applicability of this ordinance provision to the property in question, the Enforcement Officer may cause the item or items of abandoned property or building materials to be removed, destroyed and/or disposed of, and the salvage value, if any, of such items shall be

> retained by the City of Saginaw to be applied against the cost of removal, storage, handling, destruction and/or disposal of such abandoned property.
>
> Saginaw General Code, Art. V § 508.3.

> When Plaintiff went back outside, he claims that there were approximately a dozen officers standing by his fence, with marked patrol units parked up and down the street. Plaintiff again asked to see a warrant, and was told none was needed. Plaintiff next went back into his house and called the deputy chief of police, who said he would send a sergeant out. Defendant Sergeant Chester Allen arrived, and Plaintiff told him that he had a "land patent" on the property, and that they needed a warrant. Defendant Allen allegedly said he didn't know what a land patent was and called in a lieutenant. Defendant Lieutenant Pat Doolan arrived, and he likewise did not know what a "land patent" was. Plaintiff at this time was standing by the gate. Defendant Doolan allegedly told Defendants Symons and Schrems to go ahead and go in, and, according to Plaintiff, Defendant Schrems put his hand on his gun and told Plaintiff that if he was still standing there when they opened the gate, he was going to jail. (Pl. Dep. at 30.) Plaintiff moved out of the way, and Defendant Symons took the gate off its hinges to gain access to the yard. Defendants removed all of the truck parts, hauled them away on a flatbed truck (*see* photos), put the gate back on its hinges, and left.

Magistrate Judge's Report and Recommendation, at 6-9.

At oral argument on the objections, the city's attorney explained that if a property owner requested a hearing, he would be assigned to a hearing officer, who was a building department employee appointed by the city manager. The hearing officer would conduct a meeting in which the property owner, whose inoperative vehicle was "tagged" as violative of the abandoned property ordinance, could attempt to convince the hearing officer that the vehicle could run. If unconvinced, the hearing officer would order the vehicle removed. If the owner's presentation was persuasive, the code enforcement officer would repeat the process again approximately one year later if the vehicle were still on the premises. Judicial review or intervention occurred only if the property owner filed a lawsuit challenging the decision or the resulting seizure.

II.

These facts are not in dispute. Summary judgment may be granted when the pleadings, affidavits and documentary evidence demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Napier v. Madison County, Ky.*, 238 F.3d 739, 741-42 (6th Cir. 2001). For the nonmoving party to prevail, he "'must show sufficient evidence to create a genuine issue of material fact.'" *Id.* at 742 (citations omitted).

The moving parties in this case are the defendants. Although the plaintiff has not moved for summary judgment on this Fourth Amendment claim, when there are no material facts in dispute, as in this case, the Court has the discretion to grant summary judgment *sua sponte*. *Employers Ins. of Wausau v. Petroleum Specialties, Inc.*, 69 F.3d 98, 104 (6th Cir. 1995). As a general rule, courts are discouraged from doing so without giving advance notice to the parties. *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 571-72 (6th Cir. 2001). However, a party who moves for summary judgment is considered to have sufficient notice of the imminence of summary judgment in some form. Wright, Miller & Kane, *Federal Practice & Procedure* § 2720, at 346 (1998). Thus, when a party has moved for summary judgment, and the Court, finding no material fact dispute, determines that judgment as a matter of law is appropriate for the non-moving party, the Court may so order. *Id.* at 347; *Markva v. Haveman*, 168 F. Supp. 2d 695, 706-07 (E.D. Mich. 2001); *Eckford-El v. Toombs*, 760 F. Supp. 1267, 1272 (W.D. Mich.1991).

The magistrate judge in this case did not recommend granting summary judgment for the plaintiff. However, relying heavily on the Ninth Circuit decision of *Connor v. City of Santa Ana*, 897 F.2d 1487 (9th Cir. 1990), the magistrate judge concluded that when city officials intrude on

private property in which a landowner has exhibited a legitimate expectation of privacy, the Fourth Amendment requires a warrant or exigent circumstances before officials may seize personal property such as automobiles. Since both were absent here, he determined that a constitutional violation occurred.

In *Connor*, police officers scaled a fence protecting the plaintiffs' private property to examine the vehicle identification numbers on several old and apparently inoperable vehicles located on that property. After abatement hearings conducted before a hearing officer appointed by the city council resulted in an order to abate the nuisance, city officials broke through the fence two years after the initial entry and removed the vehicles. The district court held that the first entry violated the Fourth Amendment because no warrant was procured, but the second entry was reasonable because the abatement hearings provided the property owner with due process protections including an opportunity to contest the action. In a split decision, the court of appeals reversed, observing that there was no "process" exception to the Fourth Amendment warrant requirement, and held that a judicial warrant was required to enter private property to abate a nuisance.

> We conclude that the fourth amendment protected the Connors from the City's warrantless entry onto their property and from the warrantless seizure of their automobiles. The warrant requirement applied to the City when, without the Connors' consent, it broke down their fence, entered their property and seized the automobiles, regardless of how "reasonable" the warrantless search and seizure appeared in light of the pre-seizure process afforded the Connors.

897 F.2d at 1492.

The defendants object to the magistrate judge's holding and urge the Court to follow the Fifth Circuit case of *Freeman v. City of Dallas*, 242 F.3d 642 (5th Cir. 2001) (en banc), which itself declined to follow *Connor*, and held that a judicially issued warrant was not necessary in the circumstances of that case to authorize the demolition of blighted buildings determined to constitute

a nuisance under a city ordinance.

In *Freeman*, the Fifth Circuit *en banc* court determined that Dallas' nuisance abatement administrative scheme established the superfluity of the warrant clause, and that the seizure and destruction of the plaintiff's dilapidated buildings were reasonable. The procedural safeguards implemented by the City of Dallas began with the creation of the Urban Rehabilitation Standards Board (URSB), a quasi-legislative body comprised of thirty citizens appointed by the Dallas City Council invested with the authority to identify violations of the city building code from city inspectors' property condition reports. URSB hearing panels would hold hearings to determine whether property constituted an "urban nuisance," at which property owners could present witnesses and evidence and cross-examine city witnesses. The URSB panel was authorized to order remedial action, impose fines, close buildings and order demolition. Rehearings were permitted, and the property owner had "an absolute right to appeal" to a state district court whose review included whether the URSB decision violated constitutional or statutory law, was *ultra vires*, contained legal error or was based on unlawful procedure, was supported by substantial evidence, and was arbitrary or capricious. The court surmised that the plaintiff's claimed entitlement to a pre-demolition warrant would gain him nothing, inasmuch as warrants are issued in *ex parte* proceedings, and the administrative safeguards incorporated into the URSB hearing procedures provided greater protection to property owners and rendered a *per se* judicial warrant requirement "redundant." 242 F.3d at 649.

The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be

seized.

U.S. Const. amend. IV. That this Amendment applies to the actions of municipal officials who enter onto private property to search for or abate nuisances is beyond debate. *See Michigan v. Tyler*, 436 U.S. 499, 504-07 (1978); *Camara v. Municipal Court*, 387 U.S. 523, 530 (1967). It is also quite clear that this Amendment provides independent protection against not only searches but unreasonable seizures as well. *Soldal v. Cook County*, 506 U.S. 56 (1992).

The Fourth Amendment, however, contains two separate and independent clauses, one protecting persons against "unreasonable searches and seizures," and the other requiring "probable cause" before warrants may issue. Although the Supreme Court has stated that "a warrant is not required to establish the reasonableness of all government searches," *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995), the relationship of these two clauses is found most directly in those cases that have declared that certain searches and seizures conducted without a warrant are *per se* unreasonable. *See, e.g., Payton v. New York*, 445 U.S. 573, 585-86 (1980); *Katz v. United States*, 389 U.S. 347, 357 (1967).

There are instances when the failure to obtain a warrant may be excused, such as when there are exigent circumstances including the hot pursuit of a fleeing felon, *Warden v. Hayden*, 387 U.S. 294 (1967), a seizable object is in the "plain view" of an officer who has a lawful right of access to the object, *see Horton v. California,* 496 U.S. 128, 136-37 (1990), the subject gives consent, *Bumper v. North Carolina*, 391 U.S. 543 (1968), the search or seizure is incident to an arrest, *United States v. Robinson*, 414 U.S. 218 (1973), or in certain emergency situations, *see Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978). In those cases, the search or seizure without a warrant does not violate the Constitution if it is otherwise reasonable. In this case, therefore, the Court must determine if the

seizure of the plaintiff's property from his enclosed residential land is one which requires a warrant, and if not whether it was otherwise reasonable.

In *Payton v. New York*, the Supreme Court observed that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." 445 U.S. at 585-86. Accordingly, to "minimize[] the danger of needless intrusions" into the "sanctity of the home," *id.* at 586, 601, the Fourth Amendment generally requires a warrant issued by a judicial officer – a "neutral and detached magistrate." *Johnson v. United States*, 333 U.S. 10, 14 (1948). In *Camara*, the appellant sought a writ of prohibition to forestall his prosecution for refusing a warrantless administrative inspection of commercial premises by a building code inspector. However, the appellant used a portion of the premises as his personal residence. The Supreme Court stated:

> [O]ne governing principle, justified by history and current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant.

387 U.S. at 528-29.

The Supreme Court declared that the removal of a mobile home by a sheriff during an eviction from a mobile home park, conducted without a warrant or other judicial authority, constituted a seizure within the meaning of the Fourth Amendment in *Soldal v. Cook County*. The Court stated that "[a] 'seizure' of property, we have explained, occurs when there is some meaningful interference with an individual's possessory interests in that property.'. . . In addition, we have emphasized that 'at the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home.'" 506 U.S. at 61 (citations omitted).

In *GM Leasing Corp. v. United States*, 429 U.S. 338 (1977), the Supreme Court found that seizure of certain property by the Internal Revenue Service to satisfy tax obligations violated the

Fourth Amendment because no warrant was obtained. There, the Court assumed that the assessments and levies against the taxpayer's property were valid, and that probable cause existed to believe that the property was subject to seizure. *Id.* at 351. Some property, such as automobiles, was seized from public streets, but other items, including books and documents, were taken from private property, which, although denominated a "cottage," the Court found to be business premises. The Court nonetheless concluded, despite the constitutional grant to the federal government of the "Power to lay and collect Taxes," Const. Art. I § 8 cl. 1, that a warrant was required to enter private property to effectuate the seizure. "It is one thing to seize without a warrant property resting in an open area or seizable by levy without an intrusion into privacy, and it is quite another thing to effect a warrantless seizure of property, even that owned by a corporation, situated on private premises to which access is not otherwise available for the seizing officer." *Id.* at 354.

From these cases, it is quite logical to distill the rule that the seizure of personalty by means of entry onto private property requires a warrant, that is, authorization by a neutral and detached officer, in order to protect "against arbitrary invasions by government officials." *Camara*, 387 U.S. at 528. In cases of eviction, for example, the Sixth Circuit has held that tenants are "entitled to pre-eviction judicial oversight." *Flatford v. City of Monroe*, 17 F.3d 162, 170 (6th Cir. 1994). Of course, the general rule that warrantless searches of this sort are *per se* unreasonable can be overcome if government officials can demonstrate an exception to the warrant requirement. *Id.*

The defendants in this case claim that their role in abating nuisances, thereby engaging in a community caretaking function, constitutes such an exception, and they point to *United States v. Rohrig*, 98 F.3d 1506 (1996), as support for such a proposition. In that case, police officers were called to a residence by neighbors complaining about loud music blaring from the house in the

middle of the night. After several unsuccessful attempts to rouse the owner, the officers eventually entered without a warrant to find the occupant passed out in a bedroom, and also discovered contraband inside the house. Although the court of appeals viewed the officers' actions as discharging their community caretaking responsibility, the court clearly analyzed the case as one of exigent circumstances. Its inquiry was driven by three questions: "(1) whether immediate government action was required, (2) whether the governmental interest was sufficiently compelling to justify a warrantless intrusion, and (3) whether the citizen's expectation of privacy was diminished in some way." *Id.* at 1521. Thus, the case does not suspend the warrant requirement for governmental officials abating nuisances on private property. Rather, it reaffirms that the government bears a "heavy burden" of justifying a warrantless entry by demonstrating an exigency. *Id.* at 1522.

In this case, no such exigency existed. There was no demonstrated need for immediate action. The record contains no evidence that the vehicle posed an immediate threat to health or safety, or that it was causing a disturbance of the sort described by the court in *Rohrig*. The vehicle was located behind a five-foot high fence immediately adjacent to the defendant's residence. It is well-established that the protection provided by the Fourth Amendment extends to the "curtilage" area of a house. *See United States v. Jenkins*, 124 F.3d 768, 772 (1997) (citing *United States v. Dunn*, 480 U.S. 294, 301 (1987)). Although the plaintiff's fence did not prevent passers-by from observing what was in his yard, it did prevent them from gaining easy access without climbing the fence or having to use the closed gate. The actions of the city officials in this case of removing the gate and entering the plaintiff's residential premises to seize his property required authorization by a "neutral and detached magistrate." *Johnson*, 333 U.S. at 14.

The question remains whether the process prescribed by the Saginaw ordinance for deeming automobiles "inoperable," and therefore "abandoned," and providing for a review before a hearing officer appointed by the city manager, "provides a constitutionally adequate substitute for a warrant." *Donovan v. Dewey*, 452 U.S. 594, 603-04 (1981) (holding that the Mine Safety and Health Act provides a "predictable and guided federal regulatory presence" which eliminated the "unbridled discretion of Government regulatory officers" and served as a legislative substitute for a warrant to inspect mines). Indeed, the *en banc* court in *Freeman* and the dissenting judge in *Connor* found that the elaborate pre-seizure administrative procedures in those cases, which included judicial review in an adversarial context, provided much greater protection than the traditional *ex parte* proceeding before a magistrate in which search warrants are issued.

Saginaw's pre-seizure procedure does not include authorization or review by a judge or a magistrate. Of course, there is no constitutional requirement that the official authorizing the seizure be a judicial officer. In *Shadwick v. City of Tampa*, 407 U.S. 345 (1972), for example, the Supreme Court held that a municipal clerk not affiliated with the prosecutor or police and subject to the supervision of a municipal court judge may issue warrants for the arrest of suspected municipal ordinance violators. Those clerks were neither judges nor lawyers, but they were presumably capable of determining probable cause, and they were neutral and detached. And the Sixth Circuit has held that combining executive and judicial functions is not *per se* unreasonable; however issuance of warrants by an executive who is not "neutral and detached" does violate the Fourth Amendment. *See DePiero v. City of Macedonia*, 180 F.3d 770, 777 (6th Cir. 1999). *See also Coolidge v. New Hampshire*, 403 U.S. 443, 449 (1971) (state attorney general personally in charge of investigating a widely publicized murder, and who later acted as chief prosecutor at trial, ought

not to have issued a search warrant in the case); *Johnson v. United States*, 333 U.S. at 14 ("inferences [of probable cause must] be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime"); *United States v. Weaver*, 99 F.3d 1372, 1376 (6th Cir.1996) ("'the court must . . . insist that the magistrate perform his 'neutral and detached' function and not serve merely as a rubber stamp for police.'"). *But see United States v. Bowers*, 828 F.2d 1169, 1174-75 (6th Cir.1987) (district court judge's judicial supervision of city water and sewerage department pursuant to federal court order did not render him incapable of acting as a "neutral and detached" judicial officer in reviewing wiretap application pertaining to criminal investigation of water and sewerage department).

However, unlike the procedures outlined in *Freeman* and *Connor*, and in *Hroch v. City of Omaha*, 4 F.3d 693 (8th Cir. 1993) (holding that administrative procedures entailing notice, condemnation hearings and appeals, and judicial denial of injunction to prevent demolition, vitiated defendant's Fourth Amendment rights), also cited by the defendants, the procedure in this case involved only the citation by a field inspector, and the opportunity for review by a building department employee appointed by the city manager. There are no prescribed standards governing the review, and there is no avenue contained within the ordinance for judicial oversight of any sort.

Consequently, the Court cannot accept the defendants' argument that the administrative condemnation procedure provides protection equivalent to the disinterested review of a neutral and detached magistrate, thereby rendering the Fourth Amendment warrant requirement redundant and the warrantless seizure reasonable. The seizure in this case took place on the authority of a field inspector exercising his discretion to decide if the ordinance has been violated. The ordinance in this case has not been challenged as allowing arbitrary and discriminatory enforcement, *see Belle*

Maer Harbor v. Charter Township of Harrison, 170 F.3d 553, 556-57 (6th Cir. 1999), but even the nomenclature used to describe the seized items is inconsistent. For instance, the field inspector called the plaintiff's property an "abandoned vehicle," which is denominated under the city ordinance as "abandoned property" subject to removal. In this Court, the defendants refer to the seized items as "truck parts," which are not specifically mentioned in the ordinance or described as property which may not be stored on the premises. Regardless of the description, the authority to seize the items was not adequately circumscribed by standards. The opportunity for review by some official not connected to the same branch of government with which the field inspector was associated is absent. And the city's procedures include no right to appeal the decision to an administrative or judicial body.

The Court finds that the city's procedure does not amount to a constitutionally equivalent substitute for a warrant to seize personal property from private residential property. The seizure without a warrant in this case was unreasonable. The plaintiff's truck was seized from his homestead. There was no warrant, no consent, and exigent circumstances did not exist. The undisputed facts demonstrate, therefore, that the plaintiff's rights under the Fourth Amendment were violated.

III.

"A summary judgment . . . may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." Fed. R. Civ. P. 56(c). The plaintiff has not requested damages in the body of his complaint. In fact, the plaintiff has not prayed for a specific remedy in any form. However, the Court generally construes *pro se* pleadings liberally, *see Haines v. Kerner*,

404 U.S. 519 (1972); *Middleton v. McGinnis*, 860 F. Supp. 391, 392 (E.D. Mich. 1994), and the Court notices that the plaintiff has demanded "$1,000,000.00" on the Civil Cover Sheet filed with the clerk. There is no proof of an amount of damages in the record presently.

The Court finds that the plaintiff must prevail on his Fourth Amendment claim, and the determination of the appropriate remedy will abide another day.

Accordingly, it is **ORDERED** that the defendants' objections to the Report and Recommendation of the Magistrate Judge are **OVERRULED,** and the recommendation of the Magistrate Judge is **ADOPTED** for the reasons set forth herein.

It is further **ORDERED** that defendants' motion for summary judgment [dkt # 29] is **GRANTED IN PART** and **DENIED IN PART.**

It is further **ORDERED** that the plaintiff's claims based on a federal land patent claim and the claims under the Fifth, Seventh, Ninth and Fourteenth Amendments, are **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the plaintiff shall have judgment of liability, interlocutory in nature, against the defendants on the Fourth Amendment claim.

It is further **ORDERED** that the full case management reference order [dkt # 37] is **VACATED**.

It is further **ORDERED** that the remaining motions in this case, including, but not limited to, the plaintiff's Motion to Extend Discovery Cutoff [dkt#22] and Motion for an Injunction Order [dtk#23] are **DENIED AS MOOT**.

It is further **ORDERED** that the parties appear before the Court on **September 23, 2002 at**

1:30 p.m. for the purpose of a status conference pursuant to Fed. R. Civ. P. 16 to discuss further proceedings.

_____/s/_____
DAVID M. LAWSON
United States District Judge

Dated: September 4, 2002

Copies sent to: Michael Gould
Thomas H. Fancher, Esquire
Peter C. Jensen, Esquire
Magistrate Judge Charles E. Binder